ADR and Settlement in the Federal District Courts

a sourcebook for judges & lawyers

elizabeth plapinger
CPR Institute for Dispute Resolution

donna stienstra
Federal Judicial Center

with the assistance of
Laural Hooper & Melissa Pecherski, Federal Judicial Center

a joint project of the
federal judicial center *and the*
cpr institute for dispute resolution

1996

This publication is a joint project of the Federal Judicial Center and the CPR Institute for Dispute Resolution. The authors are listed alphabetically.

The sourcebook was undertaken to further the Federal Judicial Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the authors and are not necessarily those of the Federal Judicial Center.

The sourcebook was undertaken to further CPR's mission to promote sound understanding of ADR use in the public justice system. The views expressed are those of the authors and are not necessarily those of the CPR Institute for Dispute Resolution.

Contents

Preface

Dramatic changes in ADR and settlement practices in the federal courts have created a great need for information about related rules and procedures. This new resource guide will help fill that need. The sourcebook is the result of a two-year collaboration by the Federal Judicial Center and the CPR Institute for Dispute Resolution. Authors Elizabeth Plapinger, director of the CPR Judicial Project, and Donna Stienstra, senior researcher at the Federal Judicial Center, analyzed ADR and settlement practices in each of the ninety-four federal district courts. They offer a comprehensive overview of dispute resolution approaches used in each district, plus an in-depth description of each court-managed ADR program in the districts that have them.

Their study reveals that most of the ninety-four federal districts have authorized or established at least one court-wide ADR program. The grafting of ADR onto federal court processes raises many questions for judges, lawyers, policy makers, and researchers. Do judges have the resources to identify and refer cases to different types of ADR? Will a court's ADR or settlement approaches influence a litigant's choice of forum or affect other key litigation decisions? Should lawyers learn negotiation as well as litigation skills? Is the development of rules for court ADR programs good or bad for a dispute resolution process that has relied in the past on flexibility and, in many instances, informality? Has ADR eclipsed the role of judges in settlement, or have trial courts become primarily settlement forums? Are national rules needed to bring uniformity and good standards of practice to the array of innovations now found in the district courts? Should there be ethical rules or guidelines for court-connected ADR neutrals? This guide will help judges, lawyers, and policy makers begin to answer these questions.

Based on a survey of the courts and analysis of their rules, the sourcebook describes in detail how each court's ADR and settlement procedures function. It also provides information for judges who design and refer cases to dispute resolution programs, for lawyers and clients who face increasingly complex dispute resolution choices and requirements in the federal district courts, and for policy makers who study programs and make recommendations for the future.

rya w. zobel
Director, Federal Judicial Center

james f. henry
President, CPR Institute for Dispute Resolution

Acknowledgments

We are grateful to the district court judges and staff, whose aid we enlisted on more than one occasion and who were unfailingly gracious in providing it. We give our special thanks as well to Laural Hooper and Melissa Pecherski, who helped us turn the courts' rules into text; to Jeannette Summers, who helped us move our first draft to final draft; and to the Federal Judicial Center's editors, who did the meticulous work that turned our draft into this book. Not least, we are grateful to our organizations, the Federal Judicial Center and the CPR Institute for Dispute Resolution, for making this collaboration possible.

Part I
Introduction and Analysis

Introduction

Over the past several years, the use of alternative dispute resolution (ADR) techniques has been growing in significance and popularity, having served parties in disputes both large and small, from international conflicts to neighborhood arguments. Because ADR techniques are used with increasing frequency in such everyday settings as schools, churches, and workplaces, many people are now becoming acquainted with these new approaches to problem solving.

Courts and members of the legal community have been part of the movement seeking means other than litigation for resolving disputes. Someone filing a case today in federal court is far more likely than ten or even five years ago to be asked to consider some form of settlement assistance, and at all levels of the courts ADR is increasingly a part of discussions about how to manage litigation.

These recent developments should not be misread as suggesting that ADR is new to the federal courts. Experimentation with ADR—which in the federal courts encompasses arbitration, mediation, early neutral evaluation, settlement week, case valuation, and summary jury trials—began more than twenty years ago. In the district courts, the first mediation and arbitration programs date from the 1970s. Innovations of the 1980s include the summary jury trial and early neutral evaluation. Additional expansion of ADR occurred in 1988 when Congress authorized ten district courts to implement mandatory arbitration programs and an additional ten to establish voluntary arbitration programs (28 U.S.C. §§ 651–658).

A further impetus to ADR came with passage of the Civil Justice Reform Act of 1990 (CJRA), which requires all district courts to develop, with the help of an advisory group of local lawyers, scholars, and other citizens, a district-specific plan to reduce cost and delay in civil litigation (28 U.S.C. §§ 471–482). ADR is one of the six civil case management principles recommended by the statute. Today, five years into the CJRA experiment, most district courts have authorized or established some form of ADR.

With this expansion of court-based ADR, a great need has arisen for information about the federal court programs. This sourcebook is a response to that need. It provides a district-by-district compendium of current ADR and settlement procedures in the district courts. Written for several audiences, the guide provides key information for judges who design and refer cases to dispute resolution programs; for lawyers and litigants who face increasingly complex dispute resolution choices and obligations; and for policy makers and researchers at local and national levels who evaluate current programs and make recommendations for the future.

The district-by-district descriptions can be found in Part II of the sourcebook, where we also define each type of ADR technique used in the federal courts, describe the sources of our information, and note several decisions we made in

compiling the great amount of material we received from the courts. Before proceeding to the information about the courts' programs, though, we want to step back from the details and sketch out some of the patterns we've come to see in the courts' approaches to ADR.

Patterns in Federal District Court ADR

Our discussion in this section relies in part on a set of tables we prepared to help make system-wide comparisons and to illuminate features that are common across courts. The tables may be found at page 14, along with a note explaining how courts were classified for purposes of the tables. For this discussion, it is sufficient to note that we are focusing on court-based ADR programs—those that are managed by the court, are based in most instances on formal rules and procedures, and rely (with a few exceptions) on attorney-neutrals to provide the ADR service. We should also note that the information in the tables and discussed below was derived from a survey we sent to the courts and our review of court rules and other written court materials.

Court-Based ADR Programs: How Many, What Kind, and How Old?

Mediation has emerged as the primary ADR process in the federal district courts (see Table 1). In marked contrast to five years ago when only a few courts had court-based programs for mediation, over half of the ninety-four districts now offer—and, in several instances, require—mediation. Most mediation offered in the federal courts is administered wholly by the courts; only a few districts provide mediation through referral to bar groups or private ADR provider organizations.

Arbitration is the second most frequently authorized ADR program, but falls well short of mediation in the number of courts that have implemented it. In addition to eighteen statutorily authorized courts, two others (Northern District of Alabama and Eastern District of Washington) offer arbitration as the second step of a combined mediation/arbitration procedure. Several others authorize use of arbitration but have not established court-annexed programs.[1]

1. 28 U.S.C. §§ 651–658 authorizes ten courts to require participation in arbitration, hence the designation "mandatory," and ten to offer arbitration, which the parties may use at their option, hence the designation "voluntary" (two courts designated as voluntary arbitration courts have not implemented programs). Mandatory arbitration involves an "automatic" referral process; that is, cases meeting the eligibility requirements, such as case type and dollar amount, are automatically referred to ADR. (See page 7 for a more complete discussion of these referral methods.) The statutory arbitration programs are funded by congressional appropriations.

The infrequent adoption of arbitration may be in part the result of uncertainty over whether courts other than those authorized by statute may establish arbitration programs.[2]

Use of early neutral evaluation (ENE) has increased from two courts five years ago, but still is used in only fourteen courts. Limited ENE adoption under the CJRA may reflect uncertainty about the nature of this relatively new form of ADR or about its relation to mediation. Recently, one of the first two courts to use ENE—the District of Columbia—disbanded its program, finding it unnecessary in light of the court's substantial mediation program.

Settlement week and case valuation, the last two forms of court-wide ADR programs, are found in even fewer courts, with three offering a settlement week program and two offering case valuation. Both case valuation programs are in Michigan, where the federal court programs are based on a state program.

Just over half the courts report authorization or use of the summary jury trial. With little information about past practices, we do not know whether this represents a change, but our guess is that, as with other forms of ADR, the number of courts authorizing summary jury trial has grown substantially over the past five years. The level of usage reported by most courts is, however, very low—generally around one or two cases a year.

Also noteworthy is the number of courts that now offer a variety of ADR options. During the past several years, most of the ten courts authorized to establish mandatory arbitration programs in the 1980s have added mediation to their offerings. It is not uncommon today to find at least two ADR procedures available in many federal courts, and at least six courts now offer a full array of options, including arbitration, mediation, early neutral evaluation, and summary jury trial.

The range and number of federal district court ADR programs is particularly noteworthy in light of their recency: most have been implemented since 1990 (see Tables 3 through 7, second column). Although there are some long-standing programs, in particular several arbitration and mediation programs that date from the 1970s, and despite the 1983 authorization provided by amendments to Federal Rule of Civil Procedure 16, use of "extra-judicial procedures to resolve the dispute" did not fully emerge until the 1990s.[3]

2. Although the Civil Justice Reform Act of 1990 recommends that courts consider authorizing referral of appropriate cases to ADR (28 U.S.C. § 473(a)(6)), the statute does not include arbitration among the ADR methods it lists, leading some to conclude that arbitration remains limited to those courts authorized by 28 U.S.C. §§ 651–658. *See, e.g.*, Memorandum from William R. Burchill, Jr., general counsel, Administrative Office of the U.S. Courts (AO), to Abel J. Mattos, Court Administration Division, AO (July 5, 1991) (the CJRA does not appear to authorize arbitration in other courts) (on file with the Research Division of the Federal Judicial Center).

3. In 1993, further amendment of Rule 16 altered the language to "use of special procedures to assist in resolving the dispute."

For a complete picture of each court's approach to settlement, we must also look at Table 3, which attests to the continuing viability of judicial settlement efforts and the expanding role of magistrate judges in settlement. Most courts, even those with substantial ADR programs, provide judicial settlement assistance. Particularly noteworthy in Table 3 are the many courts—at least a third—that have designated magistrate judges as the court's primary settlement officers. While in-depth study of judicially hosted settlement procedures was beyond the scope of this project, our work demonstrates continuing experimentation in the courts to determine the best mix of judicial and nonjudicial settlement programs.

How Many Cases in ADR?

Of great interest to many is the number of cases going into these ADR programs. Tables 3 through 7 report the number of cases referred to each of the principal forms of court-based ADR. For several reasons, these numbers should be used cautiously. First, the courts were asked for the number of cases *referred* to ADR, not how many cases actually participated in or were resolved by ADR. Second, because ADR caseloads are not reported nationally, and in many courts the procedures for recording ADR information are rudimentary, the courts themselves frequently offered their ADR figures as only approximations. Third, large numbers should not be equated with a successful program and smaller numbers with a less successful one. A mediation program that targets complex cases, for example, may be a great success in the court's and litigants' eyes if it resolves two dozen cases a year, whereas a voluntary arbitration program that is available for all civil cases but attracts only a few each year may be a great disappointment.

It seems safe, nonetheless, to say that courts with automatic referral by case type, as in the mandatory arbitration programs and a few mediation programs, have fairly substantial ADR caseloads—for example, 1,235 arbitration cases in New Jersey, 292 mediation cases in the Middle District of North Carolina. The voluntary arbitration courts with opt-out instead of opt-in procedures also have significant caseloads—for example, 266 cases in the Western District of Pennsylvania.[4] Mandatory referral is not, however, essential for moving large numbers of cases into mediation, as we can see from the 414 cases in the Northern District of Oklahoma and the 580 cases in the Northern District of Texas. Early neutral evaluation also draws a good number of cases in several districts, as shown by the 89 cases in the Northern District of Ohio.

It is almost impossible at this time to draw any conclusions about the effectiveness of ADR from these ADR caseload figures. The tables show the substan-

4. In opt-out procedures, cases eligible for arbitration are automatically referred but then may opt-out of the process with no questions asked. In opt-in programs, cases enter the arbitration process only at the initiative of the parties.

tial variation across courts, but close examination of referral processes, local attitudes toward ADR, the nature of the caseload, and other variables is needed before this variation can be explained. Fortunately, several courts are planning evaluations of their ADR programs, and two national studies required by the CJRA will also contribute to our understanding.[5]

Referring Cases to ADR: The Shift from Referral by Case Type to the Judge as ADR Catalyst and Educator

During the past several years, there has been substantial attention in the federal courts to the issue of *how* cases are referred to ADR, a debate centered largely on the pros and cons of mandatory versus voluntary referral to arbitration. With the emergence of mediation as the primary ADR process, however, and the abandonment of several mandatory arbitration programs,[6] the principal referral mechanisms used today are notably different from those used a few years ago.

Few of the mediation programs refer cases mandatorily and automatically by case type. Most leave to the judge or parties the identification of cases suitable for ADR.

Whether the referral is made sua sponte or at the request of one or more parties (both of which are authorized in most programs), the judge has become the focal point for identifying cases appropriate for ADR and for educating attorneys and parties about it. Rather than remaining in the background, as in the mandatory arbitration programs, the newer forms of ADR expect the judge to be very much at the center of ADR use.

Even within the arbitration programs, the picture is much more nuanced than the terminology suggests. In the so-called mandatory programs, for example, the referral is only presumptively mandatory. Courts with these programs provide mechanisms for seeking removal from arbitration, and some courts readily grant such removal. Variation is also found in the voluntary programs, with several courts adhering to the textbook model of participation only if the parties voluntarily come forward, but with several others automatically referring cases on the basis of objective criteria and then permitting unquestioned opt-out by the parties.[7]

5. The study of the ten pilot and ten comparison districts, being conducted by the Rand Corporation, and the study of the five demonstration districts, being conducted by the Federal Judicial Center, will be reported to Congress by the Judicial Conference of the United States in December 1996.

6. Two mandatory arbitration courts (Western District of Michigan and Western District of Missouri) have decided to make arbitration one of several ADR options offered by the court, and one (Eastern District of North Carolina) has ended its program.

7. Participation rates in three of the four voluntary courts with opt-out procedures are similar to participation rates in courts with presumptively mandatory referral. *See* David Rauma & Carol Krafka, Voluntary Arbitration in Eight Federal District Courts: An Evaluation (Federal Judicial Center 1994).

Nonetheless, a significant change has taken place with the advent of mediation, which places greater emphasis on judicial involvement in the ADR referral than arbitration has.

ADR Obligations of Attorneys and Litigants

Along with the increased ADR responsibility that rests with the judge, a similar responsibility now falls on attorneys and parties. Courts expect attorneys to be knowledgeable about ADR in general and about the court's ADR programs in particular (see in-brief descriptions in Part II). Many courts' local rules now require attorneys to discuss ADR with their clients and opponents, to address in their case management plan the appropriateness of ADR for the case, and to be prepared to discuss ADR with the judge at the initial Rule 16 scheduling conference.

These rules indicate the extent to which the courts now expect attorneys to work with the judge to determine whether ADR should be used in a case and, if so, what kind of ADR should be used. The attorneys' and judge's responsibilities merge at the initial case management conference, which in many courts has become the critical event—or the first of several—in determining how and when ADR will be used in the case.

In the ADR event itself—that is, the mediation session, the ENE conference, or the summary jury trial—clients are generally required to attend.[8] Most courts have not, however, defined the level or kind of participation required by parties and their counsel.

Timing of the ADR Session and Integration into Case Management

With the emphasis on case-by-case screening for ADR and the importance of the Rule 16 conference has come a shift in the timing of ADR—or perhaps a recognition that ADR can be used earlier in the case has prompted the emphasis on the Rule 16 conference. In any event, whereas in the past many considered ADR appropriate only for trial-ready cases, now ADR is more often integrated into a court or judge's overall case management practices and is considered much earlier in the case.

This is and has been particularly true of ENE, which was designed to provide an early evaluation of a case's merits and was not originally intended as a settlement device. Even for settlement-oriented procedures such as mediation the process is now likely to occur earlier in the case. It occurs very early in some courts, such as the Western District of Missouri, where the first mediation session is held within thirty days of filing of the answer, and the Eastern District of Pennsylvania, where the conference is held as soon as possible after the first appearance of the defendant. Across all courts, it is not uncommon today for

8. In many courts, cases involving unrepresented parties are not referred to ADR.

discovery planning to be linked to the mediation process and for the mediation session to take place before discovery has been completed.

The Central Role of Attorney-Neutrals and Court Rosters

Although some courts provide mediation or early neutral evaluation through judges or magistrate judges, most of the courts' ADR programs rely on nonjudicial neutrals. Tables 3 through 7 show that most of the mediators, arbitrators, and other neutrals used by the courts are attorneys, with other professionals occasionally authorized to serve in that role.

Not only are attorneys the mainstay of most ADR programs, but in nearly every district the court has created its own roster rather than relying on an already-established list of neutrals or turning to private-sector ADR providers for these services.[9] For example, of the forty-three mediation programs that use nonjudge neutrals, only three rely on an outside organization, such as a bar association or state mediation program, to provide the ADR services. In contrast, one court (Western District of Missouri) has brought one of its ADR processes fully in-house by hiring an experienced litigator to serve as the court's neutral in cases referred to mediation.

Most courts set eligibility criteria for inclusion on the roster, and a significant number of courts include on the roster any person certified as an ADR neutral by a bar association or state court system. This is true for training as well, with some courts accepting as sufficient the training neutrals have received from other court systems or organizations. On the other hand, some courts completely control the training of their neutrals, either by conducting the training themselves or by screening and hiring trainers.

The emergence of court-managed rosters has brought with it a number of new questions for the courts. One of the most obvious is the question of training. Given the great range of approaches courts take to training—including requiring none—can litigants have confidence in the courts' ADR processes? Should minimum national training standards be established? A less obvious but also important question is whether neutrals have judicial immunity. Few of the courts' rules speak to this question (perhaps in a belief that the question is more appropriate for case law).[10] Only slightly more address the question of conflicts of interest between the neutral attorney's role as mediator and his or

9. The bright line between court rosters and private ADR providers is becoming less clear as increasing numbers of lawyers participating in court ADR programs also provide ADR services in the private sector, either in law firms or as part of ADR provider organizations.

10. A number of courts cite a recent District of Columbia Circuit decision on this question. *See* Wagshal v. Foster, 28 F.3d 1249 (D.C. Cir. 1994) (granting mediators and neutral evaluators in the District of Columbia Superior Court absolute quasi-judicial immunity when performing their official duties).

her role as counsel. When and under what circumstances, for example, is an attorney-neutral barred from serving as counsel in future disputes?[11]

As these issues become more urgent, a few individual federal courts (and some state court systems) are developing ethical guidelines or standards of practice for the neutrals on their rosters.[12] Several professional organizations of lawyers and ADR neutrals are also engaged in efforts to define ethical standards for ADR practice.[13] These issues are prompting commentators to ask an even more fundamental question: Are rosters of attorneys the optimum method for providing ADR services or should judges, court staff, or private sector ADR providers deliver these services instead?

Fees for ADR: Parties Generally Must Pay

In a significant shift from past practice, most courts now require parties to pay a fee to the neutral (except in the arbitration programs, where arbitrator fees are paid from congressional appropriations). In the first mediation programs, the neutrals generally provided their services pro bono. Today, of the forty-one courts offering attorney-based mediation, only nine provide that service pro bono (and one, as already mentioned, provides mediation through a staff mediator). Three others generally offer mediation without fees, although in some circumstances the parties may be required to pay the mediator. The remaining courts—that is, two-thirds of the courts with mediation programs—require that parties pay a fee (see Tables 3-7).

The courts generally use one of four different approaches to determine the fee: market rate, court-set rate, pro bono, or court-set fee after a specified number of pro bono hours. A market-rate fee, found in ten courts, is the most com-

11. In a recent decision in the District of Utah, an attorney who had mediated between two parties was disqualified, along with his firm, from representing one of the parties in subsequent litigation involving both. *See* Poly Software Int'l, Inc. v. Yu Su, 880 F. Supp. 1487 (D. Utah 1995). *See also* Cho v. Superior Ct. of La.; Cho Hung Bank, Real Party in Interest (95 C.D.O.S. 8237, Oct. 19, 1995) (entire law firm disqualified when retired judge who had conducted mediation-like meetings involving two parties joined law firm representing one of the parties).

12. *See District of Utah Manual on Alternative Dispute Resolution for Court-Appointed Arbitrators and Mediators*. Section IV contains the Code of Ethics for Court-Appointed Arbitrators and Mediators; Section V contains Information Regarding Court-Appointed Arbitrator and Mediator Liability Issues. The Northern District of Oklahoma is also developing a code of ethics for its neutrals. *See also* Florida Rules for Certified and Court-Appointed Mediators (adopted by the Florida Supreme Court, May 1992) and Ethical Guidelines for Mediators (adopted by the Alternative Dispute Resolution Section of the State Bar of Texas in 1994).

13. The CPR Institute for Dispute Resolution, in conjunction with the Georgetown University Law Center, is developing ethical guidelines and standards of practice for attorneys in ADR. See also the proposed Joint Standards of Conduct for Mediators drafted by the American Bar Association Section of Dispute Resolution, the American Arbitration Association, and the Society for Professionals in Dispute Resolution.

mon; a number of these courts, however, reserve the right to review the reasonableness of the fee. Eight courts specify a set fee, which may be either an amount per hour (for example, $150 per hour) or an amount per session (for example, $250 per session). Five courts authorize both a market-rate and court-set fee, reserving to the judge the discretion to determine which type of fee arrangement is best for each case. In four courts the neutral must serve pro bono for a specified number of hours, ranging from one to six, before the parties must pay either a court-set or market-rate fee.

In recognition that some parties cannot afford to pay a fee, a number of courts—e.g., nine of the forty-three attorney-based mediation programs—include special provisions in their rules regarding low-income or indigent parties, generally waiving the fee altogether. To provide this service, some courts require those selected from the court's roster to serve pro bono for a specified number of hours or cases.

Interestingly, there appears to be little relationship between whether fees are assessed and whether the referral to ADR is mandatory or made only with party consent. While some voluntary programs assess a fee and some do not, most of the courts that require participation in ADR also require payment of a fee.

Increasing Formalism and Institutionalization of ADR

With the Civil Justice Reform Act and its encouragement of district-wide examination, ADR has taken on a programmatic character, rather than relying on the initiatives of individual judges as in earlier ADR efforts.[14] Evidence for the growing institutionalization of ADR within the courts can be seen in the formal rules and procedures adopted by the courts, which usually apply to the court as a whole and replace the individual judge-based procedures of the past. While generally leaving to the judge's discretion whether ADR should be used in an individual case, the rules spell out the procedures to be followed once a case has been referred. Additionally, a number of courts have developed ADR brochures that are given to parties at filing to alert them to the court's ADR options. A body of judicial decisions about various components of these ADR programs is also emerging.[15]

14. As is true with most of the patterns discussed here, arbitration stands apart. As statutory programs funded from appropriations, these programs have been programmatic and court-wide from their inception.

15. *See, e.g., supra* notes 10 & 11. *See also* Cincinnati Gas & Elec. Co. v. General Elec. Co., 854 F. 2d 900 (6th Cir. 1988) (summary jury trial may be ordered closed to the public); GTE Directory Serv. Corp. v. Pacific Bell Directory, 135 F.R.D. 187 (N.D. Cal. 1991) (disclosure of privileged documents for use in an ENE session does not, by itself, waive privilege, as long as the party states its intention to retain the privilege); Kimbrough v. Holiday Inn, 478 F. Supp. 566 (E.D. Pa. 1979) (upholding mandatory arbitration program in one of the ten pilot courts and rejecting Seventh Amendment challenge); Hume v. M & C Management, 129 F.R.D. 506 (N.D. Ohio 1990) (federal

Further evidence of ADR's institutionalization is the emergence of specialized staff. Nearly a dozen courts have appointed an ADR administrator or director whose full-time responsibility is to manage and monitor the court's ADR programs. The administrator's duties are often broad and include recruitment and training of the court's neutrals, assistance in identifying cases appropriate for ADR, and ongoing evaluation of program quality. While some courts have created these positions because they have special funding as experimental courts under the CJRA, others support such positions from their general budget. Even when courts have not been able to or have not wanted to fund a full-time, high-level position, many have assigned part-time ADR responsibilities to a member of the clerk's office staff.

ADR Quality and Court Resources

Quality ADR programs require dedicated management and ongoing monitoring, especially in districts where participation in ADR is required or where parties are strongly encouraged to use neutrals from the court's roster only. With the rapid expansion of ADR in the district courts, critical questions arise: Do the courts have the resources and capability to run these programs and ensure the quality of their ADR services? Will the courts' resources be further strained if Congress decides to encourage or require greater use of ADR?[16] If courts do not have the resources, should they be in the ADR business at all?

As this sourcebook shows, ADR is a growing presence in the district courts, and questions of how to ensure its quality will only become more urgent. As a matter of policy, the judiciary has spoken in support of a variety of alternatives to litigation and has recognized the importance of well-designed and funded programs.[17] Within a year, Congress will presumably consider again whether to

courts have no authority to summon citizens to serve as jurors in summary jury trials). *And see* Strandell v. Jackson County, 838 F.2d 884 (7th Cir. 1988), and *In re* NLO, Inc., 5 F.3d 154 (6th Cir. 1993) (judge cannot order parties to participate in a summary jury trial); *cf.* McCay v. Ashland Oil Co., 120 F.R.D. 43 (E.D. Ky. 1988), and Arabian Am. Oil Co. v. Scarfone, 119 F.R.D. 448 (M.D. Fla. 1988).

16. *See, e.g.*, H.R. 1443, 104th Cong. 1st Sess. (1995), the Court Arbitration Authorization Act of 1995, which would require all district courts to offer arbitration. The Judicial Conference has opposed extension of the authority to adopt mandatory court-annexed arbitration beyond the ten currently authorized districts. JCUS Report, March 1993, at 12, and Sept. 1993, at 45.

17. Recommendation 39 of the Long Range Plan for the Federal Courts states, "District courts should be encouraged to make available a variety of alternative dispute resolution techniques, procedures, and resources to assist in achieving a just, speedy, and inexpensive determination of civil litigation." See pp. 70–71 for the recommendation and its supporting language. Judicial Conference of the United States, Long Range Plan for the Federal Courts (December 1995).

continue authorization for the twenty arbitration courts and may consider as part of that authorization whether all courts should offer a variety of ADR methods.[18] For those who will initiate and design future ADR programs—as well as for those who wish to examine and revise existing programs—we offer this sourcebook as a guide and resource.

18. Pub. L. No. 103-420 extended the arbitration programs through 1997. In hearings on H.R. 1443 (Court Arbitration Authorization Act of 1995), held May 11, 1995, testimony by the Department of Justice suggested the bill be amended to require federal district courts to offer an array of ADR options. *See* Court Arbitration Authorization Act of 1995: Hearings on H.R. 1443 Before the Subcomm. on Courts and Intellectual Property of the House Committee on the Judiciary, 104th Cong., 1st Sess. 65–67 (1995) (testimony of Paul R. Friedman, deputy associate attorney general, U.S. Department of Justice).

A Note on Tables 1–7

In the following tables we identify the principal ADR programs adopted by the federal district courts. The tables include only ADR processes that we have labeled "court-based programs," by which we mean those that are managed by the courts and, in most instances, are based on formal rules and procedures that apply court-wide. While most of the procedures classified this way use attorney neutrals to provide the ADR service, we also include in the table the several mediation and ENE programs that rely on judges. Selecting which of the growing number of magistrate judge settlement programs to classify as mediation is risky at best; we selected only those where a court specifically mentioned that it follows a mediation model or has trained its magistrate judges in mediation techniques. As more magistrate judges receive such training, the line between magistrate judge settlement programs and mediation programs will blur even further.

In Table 1, we report the range and number of court-based ADR programs established in the district courts through the summer of 1995. We categorize all ADR programs according to generally accepted terminology; footnotes indicate where different program names are used by the court. The table identifies the courts that have established programs for arbitration, mediation, early neutral evaluation, settlement week, and case evaluation, as well as the courts that authorize or use the summary jury trial.

To get a complete picture of each courts' approaches to ADR and settlement, the reader should also consult Table 2, which describes other case resolution procedures reported to us by the courts. The table provides information about the courts' judicial settlement practices. It also identifies courts that have authorized ADR use but have not established procedures for referring and managing cases; courts that have decided to refer cases to private ADR providers rather than to implement their own program; and courts that have decided not to authorize or use any form of ADR.

Tables 3 through 7 report selected features of the five main forms of court-managed ADR—arbitration (Table 3), mediation (Table 4), early neutral evaluation (Table 5), settlement week (Table 6), and case valuation (Table 7). Only courts identified in Table 1 as having ADR programs are included in Tables 3 through 7. The tables provide information on the date the courts' ADR programs were established, the methods by which cases are referred to ADR (including whether referral is mandatory), the types of neutrals on the courts' rosters, whether parties must pay fees, and how many cases were referred to the ADR program in the first nine months of 1994.

Table 1: ADR in the Federal District Courts

	Court ADR Programs						
District	Arbitration	Mediation	Early Neutral Evaluation	Settlement Week	Case Valuation	Summary Jury Trial	District
M.D. Ala.							M.D. Ala.
N.D. Ala.	•[1]	•					N.D. Ala.
S.D. Ala.		•				•	S.D. Ala.
D. Alaska							D. Alaska
D. Ariz.	•						D. Ariz.
E.D. Ark.							E.D. Ark.
W.D. Ark.							W.D. Ark.
C.D. Cal.							C.D. Cal.
E.D. Cal.			•				E.D. Cal.
N.D. Cal.[2]	•	•	•			•	N.D. Cal.
S.D. Cal.	•	•	•[3]			•	S.D. Cal.
D. Colo.		•[4]				•	D. Colo.
D. Conn.						•	D. Conn.
D. Del.		•[5]					D. Del.
D. D.C.		•					D. D.C.
M.D. Fla.	•	•					M.D. Fla.
N.D. Fla.		•					N.D. Fla.
S.D. Fla.		•				•	S.D. Fla.
M.D. Ga.	•						M.D. Ga.
N.D. Ga.							N.D. Ga.
S.D. Ga.							S.D. Ga.
D. Guam							D. Guam
D. Haw.							D. Haw.
D. Idaho	•	•					D. Idaho
C.D. Ill.						•	C.D. Ill.
N.D. Ill.						•	N.D. Ill.
S.D. Ill.						•	S.D. Ill.
N.D. Ind.		•					N.D. Ind.
S.D. Ind.		•				•	S.D. Ind.
N.D. Iowa		•[6]				•	N.D. Iowa
S.D. Iowa		•[7]				•	S.D. Iowa
D. Kan.		•				•	D. Kan.
E.D. Ky.							E.D. Ky.
W.D. Ky.		•				•	W.D. Ky.

Table 1 (cont.)

	Court ADR Programs						
District	Arbitration	Mediation	Early Neutral Evaluation	Settlement Week	Case Valuation	Summary Jury Trial	District
E.D. La.						•	E.D. La.
M.D. La.		•[8]				•	M.D. La.
W.D. La.						•	W.D. La.
D. Me.						•	D. Me.
D. Md.						•	D. Md.
D. Mass.						•	D. Mass.
E.D. Mich.					•[9]		E.D. Mich.
W.D. Mich.	•	•	•		•[10]	•	W.D. Mich.
D. Minn.		•[11]				•	D. Minn.
N.D. Miss.						•	N.D. Miss.
S.D. Miss.							S.D. Miss.
E.D. Mo.		•	•				E.D. Mo.
W.D. Mo.[12]	•	•	•			•	W.D. Mo.
D. Mont.							D. Mont.
D. Neb.		•[13]					D. Neb.
D. Nev.			•[14]			•	D. Nev.
D. N.H.						•	D. N.H.
D. N.J.	•	•				•	D. N.J.
D. N.M.						•	D. N.M.
E.D.N.Y.	•	•	•				E.D.N.Y.
N.D.N.Y.	•					•	N.D.N.Y.
S.D.N.Y.		•					S.D.N.Y.
W.D.N.Y.	•			•[15]			W.D.N.Y.
E.D. N.C.		•				•	E.D. N.C.
M.D. N.C.		•					M.D. N.C.
W.D. N.C.		•				•	W.D. N.C.
D. N.D.							D. N.D.
D. N. Mar. I.						•	D. N. Mar. I.
N.D. Ohio	•	•	•			•	N.D. Ohio
S.D. Ohio				•		•	S.D. Ohio
E.D. Okla.						•	E.D. Okla.
N.D. Okla.		•[16]				•	N.D. Okla.
W.D. Okla.	•	•				•	W.D. Okla.
D. Or.		•				•	D. Or.
E.D. Pa.	•	•					E.D. Pa.
M.D. Pa.		•				•	M.D. Pa.

Table 1 (cont.)

	Court ADR Programs						
District	Arbitration	Mediation	Early Neutral Evaluation	Settlement Week	Case Valuation	Summary Jury Trial	District
W.D. Pa.	•		•[17]				W.D. Pa.
D. P.R.		•[18]					D. P.R.
D. R.I.	•	•	•			•	D. R.I.
D. S.C.		•				•	D. S.C.
D. S.D.							D. S.D.
E.D. Tenn.		•					E.D. Tenn.
M.D. Tenn.		•[19]					M.D. Tenn.
W.D. Tenn.						•	W.D. Tenn.
E.D. Tex.		•					E.D. Tex.
N.D. Tex.		•[20]				•	N.D. Tex.
S.D. Tex.		•	•[21]			•	S.D. Tex.
W.D. Tex.	•	•					W.D. Tex.
D. Utah	•	•					D. Utah
D. Vt.			•				D. Vt.
D. V.I.		•					D. V.I.
E.D. Va.							E.D. Va.
W.D. Va.							W.D. Va.
E.D. Wash.	•[22]	•					E.D. Wash.
W.D. Wash.	•	•					W.D. Wash.
N.D. W. Va.				•		•	N.D. W. Va.
S.D. W. Va.		•					S.D. W. Va.
E.D. Wis.		•				•	E.D. Wis.
W.D. Wis.		•[23]	•			•	W.D. Wis.
D. Wyo.						•	D. Wyo.
Total	22	51[24]	14[25]	3	2	48	

1. In the Northern District of Alabama, arbitration occurs only as the second stage of a two-stage mediation/arbitration process.
2. Under the Northern District of California's Multi-Option ADR Program, parties in eligible cases are asked to select from among the court's ADR options—mediation, ENE, arbitration, and magistrate judge settlement conference—and private ADR. The summary jury trial is also offered but is seldom chosen. Four judges participate in the Multi-Option Program.
3. In the Southern District of California, parties in all eligible civil cases must meet with a magistrate judge to discuss the case and the court's ADR options. The meeting is referred to as early neutral evaluation.

After this meeting, the parties may select an ADR option—arbitration, mediation, magistrate judge settlement conference—or the magistrate judge may order the parties to participate in one of these procedures.

4. In the District of Colorado, almost all civil cases are referred to the magistrate judges for mandatory settlement conferences. The magistrate judges are trained in mediation techniques and conduct the conferences as mediations.
5. The magistrate judges in the District of Delaware are trained in mediation and conduct mediation sessions in cases referred by the district judges.
6. Using classic mediation techniques, the magistrate judges in the Northern District of Iowa conduct settlement conferences in cases referred by the district judges.
7. In the Southern District of Iowa, the magistrate judges use classic mediation techniques in settlement conferences held in cases referred by the district judges.
8. Two mediation programs are available to litigants in the Middle District of Louisiana, a court-based program and a program sponsored by the Baton Rouge Bar Association.
9. In the Eastern District of Michigan, this process is also called Michigan Mediation and is administered by a nonprofit association established by the state courts.
10. This process is also called Michigan Mediation.
11. In the District of Minnesota, the settlement conferences conducted by the magistrate judges are modeled on the classic mediation process and techniques.
12. The Western District of Missouri has established the experimental Early Assessment Program (EAP) in which one-third of eligible civil cases are required to meet with the EAP administrator within thirty days after answer is filed to select one of the court's ADR options: mediation, ENE, arbitration, and magistrate judge settlement conferences. The vast majority of participating litigants select mediation with the court's program administrator.
13. In the District of Nebraska, cases are referred to mediation centers operated by the State of Nebraska Office of Dispute Resolution, where neutrals trained to mediate federal cases serve as mediators.
14. The District of Nevada is experimenting with an early case evaluation program for in forma pauperis pro se prisoner cases. District and magistrate judges conduct the evaluation hearings.
15. Some judges in the Western District of New York refer cases to a settlement week program sponsored by the Monroe County Bar Association. The court held its own settlement week in the fall of 1995.
16. The Northern District of Oklahoma calls its mediation process the Adjunct Settlement Judge Program.
17. The Western District of Pennsylvania calls its neutral evaluation process mediation/evaluation.
18. The District of Puerto Rico has trained all its judicial officers to serve as mediators, and any civil case may be referred for mediation to a judge other than the judge assigned the case. Magistrate judges conduct most of the mediations.
19. In the Middle District of Tennessee, cases may be referred to settlement conferences sua sponte, but most are referred with party consent. A judge who is not assigned to the case—usually a magistrate judge—conducts the settlement conference following either a facilitative or evaluative mediation model. On balance, the facilitative model is used more frequently than the evaluative model.
20. The court managed mediation program in the Northern District of Texas relies on private providers rather than on a court roster.
21. The Southern District of Texas offers a process whose goal is case evaluation and settlement. Although labeled "arbitration," the procedure is more like ENE—no decision is given, for example, and no judgment entered.
22. In the Eastern District of Washington, arbitration is generally used only as the second stage in a case initially referred to mediation.

23. The magistrate judges in the Western District of Wisconsin, who conduct most of the court's settlement conferences, use mediation techniques.
24. In eight of these mediation programs, the mediation sessions are conducted by magistrate judges. In the remainder of the programs, nonjudicial neutrals conduct the sessions.
25. In two of these ENE programs, the ENE sessions are conducted by judges. In the remainder of the programs, nonjudicial neutrals conduct the sessions.

Table 2: Other Case Resolution Practices and Procedures

District	Description
M.D. Ala.	Although the court has not established a court ADR program, it provides a settlement program in which most civil cases are eligible for voluntary settlement conferences with magistrate judges.
N.D. Ala.	In addition to mediation and mediation/arbitration, the court authorizes use of any private or court-sponsored ADR requested by the parties and approved by the court. All cases remain subject to a settlement conference with a district or magistrate judge.
S.D. Ala.	In addition to mediation, the court permits litigants to use private ADR or summary jury trial with court approval. Parties may also request a settlement conference with a judge.
D. Alaska	The court has determined that it will not at this time establish any court ADR programs. The judges may require litigants to participate in judge-conducted settlement conferences.
D. Ariz.	In addition to arbitration, the court authorizes referral to private ADR services with consent of all parties. Cases are also commonly referred to magistrate judges for settlement conferences.
E.D. Ark.	The court has determined that it will not establish any court ADR programs. Private ADR options are described in the court's general brochure for civil litigants.
W.D. Ark.	The court has determined that it will not establish any court ADR programs but will provide litigants a brochure describing private ADR options in the community. The court is experimenting with a mandatory settlement conference procedure, in which all trial-ready cases assigned to one of the court's district judges are referred to magistrate judges for settlement discussions.
C.D. Cal.	Late in the pretrial process, the court requires parties to participate in a mandatory settlement procedure hosted either by the assigned judge, another district judge, a magistrate judge, or an attorney. Parties may also request referral to a retired judge or private ADR provider. This program is described by the court as a "structured settlement conference" and may entail use of "summary adversarial hearings." Each judge is also authorized to develop procedural rules for other ADR methods suggested by the parties and approved by the judge.
E.D. Cal.	In addition to the early neutral evaluation program, all district and magistrate judges are available to conduct settlement conferences as early in the case as practicable.
N.D. Cal.	Under the court's Multi-Option ADR Program litigants may request an early settlement conference with a magistrate judge. Late-stage settlement conferences are also held in many civil cases, generally conducted by magistrate judges.

Table 2 (cont.)

District	Description
S.D. Cal.	In addition to its ADR programs, the court authorizes mandatory settlement conferences, which are held in almost every civil case and are conducted by the magistrate judges.
D. Colo.	In addition to its magistrate judge mediation program, the court encourages litigants to pursue private ADR options. The summary jury trial is used occasionally.
D. Conn.	The court has established a procedure in which retired attorneys, called parajudges, conduct settlement conferences. District and magistrate judges may also conduct settlement conferences, and consensual referrals to private ADR and summary jury trial are authorized as well.
D. Del.	The court has established a settlement program in which magistrate judges are authorized to conduct settlement conferences, mediations, early neutral evaluations, and arbitrations in cases referred by the district judges.
D. D.C.	In addition to the mediation program, individual judges refer cases to magistrate judges for settlement conferences.
M.D. Fla.	In addition to its mediation and arbitration programs, the court requires preliminary pretrial conferences at which settlement is discussed.
S.D. Fla.	In addition to its mediation program, the court also uses mandatory judge-hosted settlement conferences.
M.D. Ga.	In addition to the arbitration program, one judge frequently asks parties in complex civil cases to consider private mediation.
N.D. Ga.	The court authorized a mandatory, nonbinding arbitration program under its CJRA plan, but the court will not implement it until the district receives congressional funding and authorization for the program. Individual judges are experimenting with ADR on a case-by-case basis, and some encourage use of private mediation or arbitration.
S.D. Ga.	The court authorizes use of arbitration and mediation but has not established any court ADR programs to provide these services. The court regularly requires settlement conferences as part of status and pretrial conferences.
D. Guam	The court has not established any court ADR programs but authorizes voluntary use of judge-hosted settlement conferences in all cases.
D. Haw.	The court has not established any court ADR programs. The magistrate judges conduct many settlement conferences.
D. Idaho	In addition to its mediation program, the court refers all appropriate cases to the magistrate judges for mandatory settlement conferences after discovery is completed.

Table 2 (cont.)

District	Description
C.D. Ill.	The court has not established any court ADR programs but reports occasional use of the summary jury trial.
N.D. Ill.	The court has not established any ADR programs but relies instead on judge-hosted settlement conferences, the court's primary settlement process. Some judges also refer cases to private mediation and arbitration, and some conduct occasional summary jury trials.
S.D. Ill.	The court authorizes post-discovery referral to mandatory settlement conferences conducted by district and magistrate judges. One judge has made occasional use of the summary jury trial.
N.D. Ind.	The court requires that parties in cases not resolved by the court's mediation program participate in a settlement conference with a district or magistrate judge.
S.D. Ind.	In addition to providing a mediation process, the court refers nearly every civil case to a settlement conference with a magistrate judge. One judge uses the summary jury trial.
N.D. Iowa	In addition to referral of cases to the magistrate judge for settlement conferences, the judges occasionally hold a summary jury trial.
S.D. Iowa	In addition to use of the magistrate judges for settlement conferences in the court's lengthier cases, the court conducts an annual master trial calendar for shorter trial-ready cases. During the period 90–120 days before trial, the magistrate judges hold settlement conferences in these cases.
D. Kan.	In addition to mediation and summary jury trial, the court authorizes use of most other ADR methods but has not established court ADR programs to provide these services.
E.D. Ky.	The court has not established any court-wide ADR programs. In the Lexington division, litigants are advised of a private mediation service. In the Covington division, litigants are advised of a state court program for voluntary arbitration. Each judge has his or her own settlement procedures.
W.D. Ky.	The court is authorized by statute to provide voluntary arbitration but has not implemented a program. In addition to its mediation program, the court authorizes use of early neutral evaluation, but has not established an ENE program. The court occasionally refers a case to a summary jury or bench trial conducted by a magistrate judge. All judges conduct settlement conferences and also refer many cases to the magistrate judges for settlement.
E.D. La.	The assigned judge is authorized to employ any ADR processes endorsed by the court, including referral to private mediation with the parties' consent, but the court has not established a program to provide these ser-

Table 2 (cont.)

District	Description
	vices. Local rules require counsel to be authorized and prepared to discuss settlement at the final pretrial conference.
M.D. La.	In addition to the court's mediation program, all civil cases remain subject to judicial settlement conferences. The court also authorizes mandatory summary jury trials.
W.D. La.	The court authorizes and encourages use of arbitration and mediation but has determined that it will not establish court ADR programs. Two of the magistrate judges conduct summary jury trials, and the court maintains a list of attorneys and other experts who have volunteered to provide ADR services. The court also holds settlement conferences at the request of the parties.
D. Me.	The court uses summary jury trials and other ADR techniques but has not established court ADR programs. The court encourages settlement efforts throughout the litigation, and counsel must exchange settlement offers before the final pretrial conference.
D. Md.	The court has not established a court ADR program but advises clients in special cases of various ADR techniques, such as the summary jury trial. Settlement conferences with the magistrate judges are available.
D. Mass.	The court authorizes several forms of ADR and maintains a list of private ADR neutrals, but has not established a formal court ADR program. Some judges refer cases to a summary trial procedure managed by the Boston Bar Association. District or magistrate judges hold settlement conferences at party or judge request.
E.D. Mich.	In addition to the case valuation program, all judges are available to conduct settlement conferences. Individual judges may also authorize use of other forms of ADR on a case-by-case basis at party request.
W.D. Mich.	In addition to referral to the court's ADR programs, judges also refer selected cases to settlement conferences, usually conducted by a magistrate judge.
D. Minn.	The court authorizes use of nonbinding arbitration, summary jury trial, and other ADR procedures before a district judge, magistrate judge, or nonjudicial neutral but has not established a court ADR program. A proposed local rule to formalize existing practice would require nearly all trial-ready civil cases to participate in a settlement conference. Magistrate judges also hold settlement conferences at other stages of the litigation.
N.D. Miss.	Although the court has not established an ADR program, it authorizes use of most forms of ADR, including the summary jury trial, with consent of the parties. The clerk's office maintains a list of private ADR pro-

Table 2 (cont.)

District	Description
	viders. The magistrate judges routinely discuss settlement at the final pretrial conference and at earlier stages if appropriate.
S.D. Miss.	Although the court has not established an ADR program, it encourages use of ADR and provides litigants with information about ADR resources in the community. The court authorizes mandatory settlement conferences.
E.D. Mo.	In addition to the mediation and early neutral evaluation programs, judges refer cases to settlement conferences on an ad hoc basis.
W.D. Mo.	Under the court's Early Assessment Program (EAP), parties may choose to have their case referred to a magistrate judge for settlement discussions. Cases not in the EAP may be referred for a magistrate judge settlement conference after discovery is complete.
D. Mont.	The court has not established any court ADR programs, but the judges routinely refer cases to post-discovery settlement conferences with the magistrate judges. Conferences may also be held earlier in the case if appropriate.
D. Nev.	The court authorizes the judges to use any appropriate form of ADR, including summary jury trial, but has not established procedures other than those for handling prisoner cases. On a case-by-case basis, cases may be referred to the magistrate judges for settlement conferences.
D. N.H.	The court has decided not to establish a court ADR program but promotes settlement at all stages of a case and encourages parties to consider voluntary use of private ADR. The summary jury trial has been used by some judges. All judges are available for settlement conferences, and settlement is routinely discussed at the final pretrial conference.
D. N.J.	In addition to its mediation and arbitration programs, mandatory settlement conferences with district and magistrate judges are an established procedure in the court.
D. N.M.	The court encourages the judges and litigants to consider use of ADR but has not established any ADR programs. The judges use summary jury trials, and mandatory settlement conferences with magistrate judges are held in all civil cases near the close of discovery.
E.D.N.Y.	In addition to its ADR procedures, the court's magistrate judges hold settlement conferences in nearly every civil case.
N.D.N.Y.	In addition to its arbitration program, the court refers most civil cases to the magistrate judges for settlement discussions. The summary jury trial is used by the court on occasion.

Table 2 (cont.)

District	Description
S.D.N.Y.	In addition to the mediation program, the judges hold settlement conferences in most civil cases.
W.D.N.Y.	In addition to its arbitration and settlement week procedures, the court authorizes mandatory settlement conferences in most civil cases early in the pretrial process.
E.D. N.C.	In addition to its mediation program, the court authorizes its magistrate judges to conduct settlement conferences at the request of judges or parties. On occasion, magistrate judges conduct a summary jury trial.
M.D. N.C.	In addition to its mediation program, the court holds settlement conferences in all cases set for the four annual civil trial calendars.
W.D. N.C.	Litigants who do not agree to participate in the court's mediation program must select another ADR process. Processes authorized by the court—though not established as court programs—include arbitration and early neutral evaluation. Summary jury trials are also authorized, as are mandatory settlement conferences.
D. N.D.	The court encourages voluntary use of ADR and other settlement devices, and the court's uniform scheduling/discovery form lists an array of options for litigants to consider, including early judicial settlement conferences; ENE with a judicial officer, technical expert, or attorney; and private mediation or arbitration. Parties most frequently request settlement conferences with a magistrate judge. Mandatory conferences are scheduled for cases that have not settled by the close of discovery.
D. N. Mar. I.	The court has determined that it will not establish court ADR procedures but authorizes use of the summary jury trial. Judicial settlement conferences may also be held, either at the order of a judge or request of a party.
N.D. Ohio	In addition to its ADR programs, the court held a settlement week in 1994.
S.D. Ohio	In addition to providing a settlement week process, the court authorizes party use of any appropriate ADR process available in the private sector. Summary jury trials are used on occasion in complex cases. District and magistrate judges conduct settlement conferences upon order of a judge or request of a party.
E.D. Okla.	Most civil cases are mandatorily referred to the magistrate judge—also called the settlement judge—for settlement conferences; referral generally occurs after completion of discovery. Summary jury trials are also used by the court.
N.D. Okla.	In addition to its mediation program, the court offers special procedures for business disputes, including the Executive Summary Jury Trial, which combines elements of the summary jury trial, the minitrial, and evaluative mediation in a one- to two-day settlement process. The court also

Table 2 (cont.)

District	Description
	authorizes use of mandatory judge-hosted settlement conferences at the earliest possible stage in the case. Some judges refer all eligible cases, others refer cases only with party consent.
W.D. Okla.	In addition to its ADR programs, the court refers most civil cases to a magistrate judge for mandatory settlement conferences after discovery is complete. Referral before discovery completion requires party consent.
D. Or.	In addition to its mediation program, the court authorizes settlement conferences at either a judge's order or a party's request. The summary jury trial is also used occasionally.
E.D. Pa.	In addition to its court programs, the court permits any party or judge to suggest use of any other ADR process. The court also authorizes mandatory settlement conferences.
M.D. Pa.	In addition to its mediation program, the court holds at least one pretrial/settlement conference in each civil case. The summary jury trial is used regularly by one judge on the court.
W.D. Pa.	In addition to its ADR programs, the court holds settlement conferences as needed.
D. P.R.	In addition to the magistrate judge mediation program, judges routinely hold settlement conferences in their cases before trial.
D.R.I.	All civil litigants must participate in a mandatory settlement conference with a magistrate judge or use one of the court's ADR options.
D. S.C.	In addition to the court's mediation program, some magistrate judges hold settlement conferences as part of their civil pretrial work. The court also held one settlement week in 1993 and has on occasion used the summary jury trial.
D. S.D.	The court has not established any court ADR programs but is experimenting with referral of selected complex cases to magistrate judges for settlement discussions.
M.D. Tenn.	The court approves and encourages the use of ADR but has not yet determined whether it will establish any court ADR programs other than the magistrate judges' mediation program. Most civil cases may be mandatorily referred to a judicial settlement conference at any time, but referrals are generally made only with party consent.
W.D. Tenn.	The court authorizes the assigned judge to use mediation, summary jury trial, or other forms of ADR as appropriate. The court is considering establishing a mediation program and has authorized but not implemented an ENE program. The court relies heavily on settlement conferences conducted by either the assigned judge, a magistrate judge, or another district judge.

Table 2 (cont.)

District	Description
E.D. Tex.	In addition to its mediation program, the court holds mandatory case management conferences at which settlement may be discussed.
N.D. Tex.	In addition to its mediation program, which authorizes referrals to private mediators, the court authorizes use of summary jury trial and referral to other private ADR methods. The court also authorizes mandatory judge-hosted settlement conferences and strongly favors early settlement discussions.
S.D. Tex.	In addition to the court's ADR procedures, summary jury trials are held on occasion. Some judges also hold settlement conferences.
W.D. Tex.	In addition to its arbitration and mediation programs, the court authorizes other ADR methods but has not established them as court programs. District and magistrate judges conduct settlement conferences upon request of the parties.
D. Utah	In addition to its ADR programs, the court authorizes judge-hosted settlement conferences, but they are not often used.
D. Vt.	In addition to providing early neutral evaluation, the court schedules mandatory judicial settlement conferences in almost all trial-ready cases.
D. V.I.	In addition to its mediation program, the court encourages settlement discussions at all conferences in civil cases. The judges hold settlement conferences at party request.
E.D. Va.	The court has not established any forms of court ADR. Settlement conferences are held when requested by the parties.
W.D. Va.	The court is one of ten authorized by statute to provide voluntary arbitration but is one of two that has not implemented a program. The court has not established any other ADR programs. Judge-hosted settlement conferences are used as needed.
E.D. Wash.	In addition to its ADR procedures, the court holds settlement conferences, upon party request, in cases in which discovery has been completed.
W.D. Wash.	In addition to its ADR procedures, the court authorizes settlement conferences at party or judge initiative. In mediated cases that do not settle, the judge frequently orders a settlement conference.
N.D. W. Va.	Settlement week is the court's main ADR device, but parties may opt out of settlement week by selecting another form of ADR authorized by the court, including arbitration, early neutral evaluation, and summary jury trial. The court has not established any court programs to provide these other ADR methods.
S.D. W. Va.	In addition to mediation, the court has authorized neutral evaluation with a judge. Judge-hosted settlement conferences are held in every trial-ready case.

Table 2 (cont.)

District	Description
E.D. Wis.	The court permits parties to use any form of ADR but provides only mediation through a court program. Summary jury trials are held occasionally, and the judges hold settlement conferences at their discretion.
W.D. Wis.	Although the court provides an early neutral evaluation program, the court's primary settlement device is a settlement conference with a magistrate judge, who may commence settlement on his or her own initiative or at a judge or party's request. Summary jury trials are held on occasion in cases headed for protracted trials.
D. Wyo.	The court authorizes use of arbitration, mediation, summary jury trial, and other dispute resolution methods, but has not established any court ADR programs. The magistrate judges provide most of the court's settlement assistance. Mandatory referral is authorized but seldom used.

Table 3: Arbitration Program Specifics—Date Established, Method of Case Referral, Type of Neutral, Fees, and Number of Cases Referred

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Ala.[1]	1994					•	Nonjudicial	Parties pay the neutral at a rate set by the parties or court. Unless parties or the court determine otherwise, the parties share the fee equally. Neutrals are encouraged to provide five free hours annually to low-income litigants.	Very few.
D. Ariz.	1992					•[2]	Attorneys	The court sets and pays the arbitrator a fee of $250 per case or per hearing day.	155 (1/94–11/94)
N.D. Cal.[3]	1978	•	•			•	Attorneys	The court sets and pays fees of $250 a day to a single arbitrator or $150 a day to each arbitrator on a three-member panel.	252[4]
S.D. Cal.	1992			•		•	Attorneys	No fee.	9

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 3 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
M.D. Fla.	1984	●				●	Attorneys	The court sets and pays fees of $100 per hearing for each arbitrator.	500[5] (1/94–11/94)
M.D. Ga.	1991					●[6]	Attorneys	Funds permitting, the court pays a single arbitrator at a court-set rate of $250 a day.	132
D. Idaho	1992					●	Attorneys or retired judges	In standard cases, the parties equally share the arbitrator's court-set fee of $100 an hour. In large complex cases, where the parties may select three arbitrators, the parties and arbitrators negotiate the fee.	0
W.D. Mich.	Established in 1985 as a mandatory program; made voluntary in 1992					●	Attorneys	The court pays the single arbitrator at the court-set rate of $250 per case.	9

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 3 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
W.D. Mo.[7]	Established in 1985 as a mandatory program; made voluntary in 1992		●			●	Attorneys or retired judges	The parties equally share the single arbitrator's market-rate fee, which is listed in the arbitrator's application to the court.	1
D.N.J.	1985	●				●	Attorneys	For all mandatory referrals, the court pays the single arbitrator a court-set fee of $250 per case. When parties use arbitration by consent, they pay the arbitrator's fee.	1,235[8]
E.D.N.Y.	1986	●		●		●	Attorneys	The court sets and pays fees of $250 per case to a single arbitrator or $100 a case to each member of a three-person panel.	527[9]
N.D.N.Y.	1991					●	Attorneys	The court sets and pays fees of $250 per case to a single arbitrator or $100 per case to each member of a three-person panel.	0

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 3 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
W.D.N.Y.	1992					●	Attorneys	The court sets and pays fees of $250 per case to a single arbitrator or $100 per case to each member of a three-person panel if the arbitrators are selected from the court's panel. If outside arbitrators are used, the parties pay the fee if it exceeds the court-approved amount.	1
N.D. Ohio[10]	1991			●	●	●	Attorneys and other qualified persons with special expertise or dispute resolution experience	The court sets and pays fees of $250 per day or per case to a single arbitrator or $100 per case or per day to each member of a three-person panel.	4
W.D. Okla.	1985	●				●	Attorneys	The court sets and pays fees of $150 per case to a single arbitrator or $100 per case to each member of a three-person panel.	86[11]

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 3 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
E.D. Pa.	1978	●					Attorneys	The court pays each arbitrator on the three-person panel $100 per case.	1,453[12]
W.D. Pa.	1991					●[13]	Attorneys	The court sets and pays fees of $250 a day to a single arbitrator or $100 a day to each member of a three-person panel.	266
D. R.I.[14]	1995		●				Attorneys and other qualified persons with special expertise or dispute resolution experience	There is no fee for the first hour of the hearing; thereafter the parties pay the arbitrator at a rate not to exceed $150 an hour.	Information not yet available.
W.D. Tex.	1985	●				●	Attorneys	The court pays each member of the three-arbitrator panel $75 a day.	22[15]

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 3 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
D. Utah	1993			●		●	Attorneys	The court pays single arbitrators or each member of a panel of three arbitrators at a court-set rate of $100 per day.	4
E.D. Wash.[16]	1988					●	Attorneys	No fee.	Approximately 2% of the civil caseload was referred to arbitration from 1/94–12/94.
W.D. Wash.	1992					●	Attorneys	The court pays the single arbitrator at a court-set rate of $150 per day.	2

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

1. In the Northern District of Alabama, parties may use arbitration if they select the court's med-arb track, in which arbitration occurs only if mediation has not resolved the dispute.
2. In the District of Arizona, all eligible cases are automatically referred to arbitration after the answer is filed. Because this arbitration program is voluntary and all parties must consent to arbitrate, any party may withdraw from the arbitration referral for any reason by filing an opt-out notice.
3. Under the Northern District of California's Multi-Option Program, there is a presumption that cases assigned to the four program judges will select a form of ADR; arbitration is one of the choices. Cases assigned to other judges and that meet the criteria for arbitration set out in ADR Local Rule 4 are automatically and mandatorily referred to arbitration. In addition, any other party may choose arbitration at their own initiative.
4. Two hundred and forty-six cases were mandatorily referred by case type and damage amount under ADR Local Rule 4. Six cases selected arbitration under the court's Multi-Option Program.
5. The arbitration caseload in the Middle District of Florida consists predominantly of mandatory referrals.
6. All eligible cases are referred automatically to the voluntary arbitration program in the Middle District of Georgia. Because the arbitration program is voluntary and all parties must consent to arbitrate, any party may withdraw from the arbitration referral for any reason by filing an opt-out notice.
7. In the Western District of Missouri, one-third of eligible civil cases are automatically referred to the court's Early Assessment Program (EAP), which requires parties to select one of the court's ADR options, among which is arbitration. Another one-third of civil cases may voluntarily enter the EAP program; the full array of ADR options, including arbitration, is also available to these cases.
8. The arbitration caseload in the District of New Jersey consists predominantly of mandatory referrals.
9. The arbitration caseload in the Eastern District of New York consists predominantly of mandatory referrals.
10. In the Northern District of Ohio, a case may be referred to the court's voluntary arbitration program by judicial initiative, on the request of one party, or with the consent of all parties. Because the court's arbitration program is voluntary, any party may withdraw from an arbitration referral by filing a notice of nonconsent.
11. During the survey period in the Western District of Oklahoma, the court referred seventy-five cases to arbitration mandatorily by case type and eleven cases on consent of all parties.
12. The arbitration caseload in the Eastern District of Pennsylvania consists predominantly of mandatory referrals.
13. All eligible cases are referred to arbitration automatically in the Western District of Pennsylvania. Because this arbitration program is voluntary and all parties must consent to arbitrate, any party may withdraw from the arbitration referral for any reason by filing an opt-out notice.
14. Every civil litigant in the District of Rhode Island is required to select one of the court's settlement or ADR options, which include arbitration.
15. In the Eastern District of Washington, judges may order cases to the court's two stage mediation/arbitration process. Parties in cases not resolved by mediation may, upon their consent, proceed to arbitration.

Table 4: Mediation Program Specifics—Date Established, Method of Case Referral, Type of Neutral, Fees, and Number of Cases Referred

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Ala.[1]	1994			•		•	Nonjudicial persons	In most cases, parties equally share the fee, which is either at a reasonable market rate or a court-set rate. Neutrals are encouraged to serve five hours a year without pay to accommodate low-income litigants.	100 (4/94–12/94)
S.D. Ala.	1994			•		•		The parties generally share the fee, at an agreed-on rate of $150 an hour or less. Parties may ask the court to review the fee for reasonableness. To accommodate low-income litigants, each neutral must agree to serve without payment in one case a year.	Information not yet available.

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Cal.[2]	1993		●			●	Attorneys	There is no fee for the initial four hours. Thereafter, the mediator may continue to volunteer his or her time, or if the parties wish to continue the mediation they may agree to jointly pay the mediator $150 an hour.	83[3]
S.D. Cal.	1992			●		●	Attorneys	No fee.	7
D. Colo.	1992			●		●	Magistrate judges	Not applicable.	Unknown.
D. Del.	1991			●		●	Magistrate judges	Not applicable.	Unknown.
D.D.C.	1989					●	Attorneys	No fee.	140
M.D. Fla.	1989			●[4]		●	Attorneys	The parties pay the mediator at the court-set rate of $150 an hour.	300 (1/94–10/94)
N.D. Fla.	1995					●	State court approved roster of neutrals	The parties equally share the mediator's fee, which is at court-set rates.	Information not yet available.

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
S.D. Fla.	1993			●[5]		●	Attorneys	Parties equally share the mediator's court-set fee, which is $150 an hour unless the parties and mediator agree otherwise in writing. To accommodate low-income litigants, mediators certified by the court are required to accept at least two cases per year for a lesser or no fee.	3,611 (1/94–11/94)
D. Idaho	1995	●					Attorney	Parties equally share mediators' market rate fees and expenses. Absent such rates, mediators are paid $100 an hour.	Information not yet available.
N.D. Ind.	1991	●					Attorneys and non-attorneys	The parties pay the mediator at market-rate fees. Indigent parties may petition the court to modify the fee.	100 (1/94–12/94)
S.D. Ind.	1991					●	Attorneys	The parties pay the mediator at market rates.	150 (1/94–12/94)

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Iowa	Longstanding			●		●	Magistrate judges	Not applicable.	40
S.D. Iowa	Longstanding			●		●	Magistrate judges	Not applicable.	75
D. Kan.	1984 Wichita division only; 1991 authorized district-wide			●			Attorneys	The parties equally share the mediator's court-set fee of $125 an hour.	270
W.D. Ky.	1993					●	Attorneys and non-attorneys	The parties generally share equally the mediator's market-rate fee. If they cannot agree on a fee, the court sets the fee and the payment allocations.	28 (11/93–11/94)
M.D. La.[6]	1994					●	Attorneys and non-attorneys	In the court-based program, litigants pay a $25 administrative fee. In the Baton Rouge Bar Assoc. Program, they pay a $50 administrative fee and a $250 mediator fee for the first five-hour mediation session. If it lasts longer, an additional fee is negotiated.	20 cases were referred to the court-based program (10/94–11/94).

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
W.D. Mich.	1995					●	Attorneys	The parties equally share the mediator's normal hourly rate.	Information not yet available.
D. Minn.	Longstanding			●[7]			Magistrate judges	Not applicable.	Unknown.
E.D. Mo.	1994			●	●	●	Attorneys	The parties pay the mediator at the rate stated in the mediator's fee schedule filed with the court. The court may review and modify the mediator's fees. For low-income litigants, the court may appoint a mediator who has agreed to serve without a fee.	3 (10/94–12/94)
W.D. Mo.[8]	1992		●			●	Early Assessment Program administrator,[9] magistrate judges, attorneys	If the court EAP administrator mediates, no fees are incurred. If a neutral from the panel is selected, the parties pay the neutral at market rates.	200+[10]

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
D. Neb.	1995			●			Attorneys	The mediator is paid by the parties at a rate of $100 an hour or less, set by the state mediation center.[12] The fees may be divided equally or otherwise as agreed by the parties. An indigent party's portion of the fees may be paid by the Fed. Practice Fund.	Information not yet available.
D. NJ.	1992			●		●	Attorneys	Mediation is free to litigants for the first six hours; thereafter the mediator is paid by the parties at the court-set rate of $150 an hour.	17
E.D.N.Y.	1992					●	Attorneys	The parties generally equally share the mediator's market-rate fee.	7 (1/94–11/94)
S.D.N.Y.	1991			●			Attorneys	No fee.	582

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
E.D.N.C.	1994			●		●	Retired judges, mediators certified by the state, and attorneys	The parties generally share the fee equally, either at market rates or at a court-set rate. Parties must notify the court of the rate.	0
M.D.N.C.	1993	●					Attorneys certified to be mediators by the state	The parties equally share the mediator's court-set fee of $125 an hour. There is no fee for low-income litigants.	292 (1/94–12/94)
W.D.N.C.	1995		●[11]				Attorneys	Parties generally pay the mediator's fees in equal shares. If the mediator is selected by the parties, the fee is negotiated by the parties and mediator. If the mediator is selected by the court, the fee is set by the court. Indigent parties pay no fee and the neutral's fee is reduced by that party's share.	Information not yet available.

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Ohio	1991			●	●	●	Attorneys and other qualified persons with special expertise or dispute resolution experience	The mediation is free to litigants for the first four and a half hours; thereafter the parties pay the mediator at the court-set rate of $150 an hour.	182
N.D. Okla.	1989			●	●	●	Attorneys	There is no fee, except in complex cases where the mediator is appointed by the court as a "special project judge" and is paid by the parties at market rates.	415 (1/94–11/94)
W.D. Okla.	1992			●		●[13]	Professional mediators or attorneys	The mediator is paid by the parties according to the mediator's fee schedule filed with the court. The usual range is $250 to $900 per mediation session, split by the parties.	97

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
D. Or.	1987			●	●		Court-approved applicants	No fee.	No information available.
E.D. Pa.	1991	●					Attorneys	No fee.	101
M.D. Pa.	1994			●	●		Attorneys	No fee.	19 (4/94–9/94)
D. P.R.	1995			●		●	District and magistrate judges	Not applicable.	Unknown.
D. R.I.[14]	1995		●				Attorneys and other qualified persons with special expertise or dispute resolution experience	The mediation is free to litigants for the first hour. Thereafter the parties pay the mediator at a rate of $150 an hour or less, as agreed to and shared by the parties.	Information not yet available.

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
D.S.C.	1995					●	Attorneys	When the parties select the mediator, they and the mediator must agree on a fee. When the court appoints the mediator, the mediator is compensated at a rate agreed to by the parties or set by the court.	Information not yet available.
E.D. Tenn.	1994					●	Attorneys	Parties pay the mediator's market-rate fees, subject to court oversight for reasonableness. Parties also pay a $100 administrative fee for each case referred to mediation. Low-income litigants can seek relief from the administrative fee and mediator costs.	5 (12/94)
M.D. Tenn.	Longstanding. Formally authorized in 1994.			●[15]		●	District and magistrate judges	Not applicable.	Unknown.
E.D. Tex.	1992			●		●	Retired judges and attorneys	Parties split the court-set mediator's fee, which ranges from $125 to $250 an hour.	47

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Tex.	1993			●	●	●	Mediators certified by the state	The parties pay the mediator at market rates.	580 (7/93–6/94)
S.D. Tex.	1992			●	●		Attorneys	The mediator is paid by the parties at market rates. The court may review the fee for reasonableness.	263
W.D. Tex.	1993			●		●	Attorneys	The mediator is paid by the parties at market rates. The court may review the fee for reasonableness and may appoint a neutral to serve without a fee where appropriate.	No information available.
D. Utah	1993			●		●	Attorneys	No fee.[16]	34

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
D. V.I.	1991			●		●	Retired judges, attorneys, mediators certified by court-approved national organizations, and members of other professions	The parties pay the mediator at market rates or court-set fees. Parties each pay one half, unless the court determines that one party has not mediated in good faith.	86[17] (1/94–12/94)
E.D. Wash.	1988			●	●	●	Attorneys	No fee.	Approximately 10% of the civil caseload (1/94–12/94)
W.D. Wash.	1979			●			Attorneys	There is no fee, but the parties may agree to compensate the neutral.	Almost all civil cases are eligible for and are referred to mediation.
S.D. W. Va.	1994			●	●		Attorneys	No fee.	0 (9/94 –12/4)

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 4 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
E.D. Wis.	1992			•			Any person considered qualified by the referring judge	Parties pay fees as directed by court.	15
W.D. Wis.	Longstanding				•	•	Magistrate judges	Not applicable.	Unknown.

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

1. In the Northern District of Alabama, litigants are offered three primary ADR options or tracks: mediation, med-arb, or use of any private or court ADR process agreed to by the parties and approved by the court. Under the court's Three-Track ADR Program, mediation is the most popular option.
2. In the Northern District of California, cases assigned to the four judges participating in the Multi-Option ADR Program must select one of the court's ADR options, which include mediation, or must persuade the judge that ADR is inappropriate for the case. Mediation is available to cases assigned to other judges only if resources permit.

3. Sixty-seven cases were referred to mediation under the Multi-Option ADR Program, and sixteen cases were referred to mediation by stipulation of parties not participating in this program.
4. In the Middle District of Florida, most cases are referred to mediation by court mandate.
5. In the Southern District of Florida, almost all civil cases filed are set for mandatory mediation.
6. Two mediation programs are available to litigants in the Middle District of Louisiana, a court-based program and a program sponsored by the Baton Rouge Bar Association.
7. Under a proposed local rule, all cases in the District of Minnesota would automatically be scheduled for a mediation conference within thirty days of trial.
8. In the Western District of Missouri, a randomly selected one-third of eligible civil cases are mandatorily referred to the Early Assessment Program (EAP), which requires that parties select one of the court's ADR options, among which is mediation. Another randomly selected one-third of eligible cases may enter the EAP at their choosing; among the ADR options from which they may choose is mediation.
9. Almost all mediations are conducted by the court's EAP administrator.
10. One hundred and forty-seven cases were automatically referred to the EAP and sixty-six cases opted into the EAP. All but a very few chose mediation.
11. In the Western District of North Carolina, parties in nearly all civil cases must select a form of ADR. If they do not, the case is referred to mediation.
12. In the District of Nebraska, cases are referred to mediation centers operated by the State of Nebraska Office of Dispute Resolution.
13. In the Western District of Oklahoma, referral by party consent is the customary practice.
14. In the District of Rhode Island, every civil litigant is required to select one of the court's ADR or settlement options, which include mediation.
15. Although sua sponte referral is authorized in the Middle District of Tennessee, cases are seldom referred without party consent.
16. The District of Utah is seeking authorization from Congress to pay mediators from court appropriations at $100 an hour.
17. During 1994 in the District of the Virgin Islands, seventy-two cases were sent to mediation by sua sponte order of a judge, and fourteen cases entered mediation by stipulation of the parties.

Table 5: Early Neutral Evaluation Program Specifics—Date Established, Method of Case Referral, Type of Neutral, Fees, and Number of Cases Referred

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
E.D. Cal.	1994					●	Attorneys	No fee.	50
N.D. Cal.[1]	1985	●	●	●	●	●	Attorneys	There is no fee for the evaluator's preparation time or for the first four hours of the ENE session. After that, the evaluator may continue to volunteer his or her time, the parties may end the session, or they may continue at a fee of $150 per hour shared by the parties.	212[2]
S.D. Cal.[3]	1992	●					Magistrate judges	No fee.	1,410
W.D. Mich.	1983			●	●	●	Attorneys	Unknown.	13

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 5 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
E.D. Mo.	1994			●	●		Attorneys	The parties equally share the evaluator's market-rate fee, which the court may review for reasonableness. Litigants with financial difficulties may request an evaluator who has agreed to serve without a fee.	0 (10/94–12/94)
W.D. Mo.[4]	1992		●			●[5]	Attorneys	The parties equally share the evaluator's market-rate fee.	4
D. Nev.[6]	1994			●			Judges	No fee.	75
E.D.N.Y.	1992			●		●	Attorneys	No fee.	93 (1/94–11/94)

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 5 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
N.D. Ohio	1991			•	•	•	Attorneys and other qualified persons with special expertise or dispute resolution experience	There is no fee for the first four and a half hours of service; thereafter, the parties split the evaluator's court-set fee of $150 an hour.	89
W.D. Pa.	1995			•	•		Attorneys	There is no fee, except in unusual cases and by party request.	Information not yet available.
D. R.I.[7]	1995		•				Attorneys and other qualified persons with special expertise or dispute resolution experience	There is no fee for the first hour of service; thereafter, the parties split the evaluator's fee at a rate agreed to by the parties, not to exceed $150 an hour.	Information not yet available.

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

Table 5 (cont.)

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
S.D. Tex.	1992			●	●	●	Attorneys	The parties pay the neutral at market rates, unless the court orders the neutral to serve without payment.	1
D. Vt.	1994	●				●	Attorneys and non-attorneys	The evaluator is compensated by the parties at a rate of $500 per case split equally by the parties. This court-set fee assumes a half-day ENE session. If significantly more time is required, the parties and the evaluator agree on additional compensation.	60 (11/94–12/94)
W.D. Wis.	1993					●	Attorneys	No fee.	9

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

1. In the Northern District of California, cases assigned to the four judges participating in the Multi-Option ADR Program must select one of the court's ADR options, which include early neutral evaluation (ENE), or must persuade the judge that ADR is inappropriate for the case. For other judges, even-numbered cases meeting specified criteria are automatically and mandatorily referred to ENE.
2. One hundred and thirty-eight cases were referred to ENE automatically and mandatorily by case type during the survey period. Seventy-four cases selected ENE under the Multi-Option ADR Program.
3. In the Southern District of California, parties in all eligible civil cases must meet with a magistrate judge to discuss the case and the court's ADR options. The meeting is referred to as early neutral evaluation. After this meeting, the parties may select an ADR option—arbitration, mediation, magistrate judge settlement conference—or, the magistrate judge may order the parties to participate in one of these procedures.
4. In the Western District of Missouri, one-third of eligible civil cases are automatically referred to the court's Early Assessment Program (EAP), which requires parties to select one of the court's ADR options, among which is early neutral evaluation.
5. One-third of eligible civil cases are randomly assigned to a group that may volunteer to participate in the EAP process.
6. The experimental case evaluation program in the District of Nevada is for in forma pauperis pro se prisoner cases.
7. In the District of Rhode Island, litigants in every civil case are required to select one of the court's settlement or ADR options, which include ENE.

Table 6: Settlement Week Program Specifics—Date Established, Method of Case Referral, Type of Neutral, Fees, and Number of Cases Referred

District[1]	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94 –9/94)*
W.D.N.Y.	1995[2]			•			Attorneys	No fee.	131[3]
S.D. Ohio	1985[4]			•		•	Attorneys	No fee.	141
N.D. W. Va.	1987			•			Attorneys	No fee.	152

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

1. Two additional districts—the Northern District of Ohio and the District of South Carolina—have held a settlement week in the past. See Table 2.
2. The court held a settlement week in the fall of 1995 but has not yet determined whether it will establish an ongoing program.
3. This is the number of cases referred for the settlement week held in the fall of 1995.
4. The age of the procedure varies from division to division. The longest running program is nearly ten years old.

Table 7: Case Valuation Program Specifics—Date Established, Method of Case Referral, Type of Neutral, Fees, and Number of Cases Referred

District	Date Program Established	Mandatory Referral by Case Type or Track	Mandatory Referral to ADR Menu; Parties or Judge Select Process	Judge May Order on Case-by-Case Basis	Judge May Order on Request of One Party	Voluntary Referral Based on Consent of All Parties	Type of Neutral	Fees	Number of Cases Referred During Survey Period (1/94–9/94)*
E.D. Mich.	1984			●	●	●	Attorneys	Each party pays $75 to the nonprofit agency that administers the program, which in turn pays the three neutrals. Parties who request a panel with special expertise pay the neutrals at market rate.	145[1] (1/94–10/94)
W.D. Mich.	1983	●[2]		●	●	●	Attorneys	Each party pays each of the three neutrals $50.	127

* Courts were asked to report the number of cases referred between January 1–September 30, 1994. Where the court reported for a different time period, the time period is noted. Some numbers in this column are approximate; see individual court descriptions.

1. This is the number of hearings held. The number of cases referred is not known.
2. Referral is mandatory and automatic for some, but not all, eligible case types.